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STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator

JUN 26 2007

By *[Signature]* Deputy

Blue Cross and Blue Shield Association et al.,

Plaintiffs

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Personal Injury

Other Civil

Court File No. C6-06-4938

v.

Guidant Corporation, et al.,

Defendants

ORDER 13

**ORDER GRANTING PLAINTIFFS' MOTION FOR
LEAVE TO AMEND THEIR FIRST AMENDED COMAPLAIN**

The above entitled matter came on for hearing on June 18, 2007 on the Motion of Blue Cross and Blue Shield Association, et al., for an order permitting them to amend their First Amended Complaint to add Boston Scientific Corporation as a defendant.

This Court, having in mind the arguments of counsel, the applicable law, and all files and records herein, issues the following order.

IT IS ORDERED:

1. Plaintiffs' motion to amend their First Amended Complaint is granted.
2. Plaintiffs may serve their Second Amended Complaint upon the current Defendants and Boston Scientific Corporation.

The accompanying memorandum is made a part of this order.

Dated: June 22, 2007

[Signature]
William H. Leary III
Judge of District Court

MEMORANDUM

Plaintiffs move the court for leave to amend their First Amended Complaint. Specifically, Plaintiffs wish to add Boston Scientific Corporation ("Boston Scientific") as a defendant. Plaintiffs assert that Boston Scientific is a proper defendant because it assumed the liabilities of Guidant Corporation ("Guidant") after the former acquired the latter.

Minnesota Rule of Civil Procedure 15.01 states that "a party may amend a pleading only by leave of court" and the amendments "shall be freely given when justice so requires." Amendments should be liberally granted where "doing so will not result in prejudice to the adverse party." *Stead-Bowers v. Langley*, 636 N.W.2d 334, 341 (Minn. Ct. App. 2001). Furthermore, "[t]he party objecting to an amendment has the burden of proving that he will be prejudiced." *Raspler v. Seng*, 215 Minn. 596, 599, 11 N.W.2d 440, 441 (Minn. 1943). Finally, a court may deny a motion to amend "when the additional alleged claims cannot be maintained." *Stead-Bowers*, 636 N.W.2d at 341.

Defendant, in opposing Plaintiffs' motion, has not asserted prejudice. Rather, Defendant has urged this Court to deny the motion on the grounds that Plaintiffs' additional claims cannot be maintained.

Plaintiffs' allegations in line 65 of their Second Amended Complaint are marginal at best. Plaintiffs' exhibits, however, lend credibility to the allegation that Boston Scientific has assumed Guidant's potential liability. Boston Scientific's Annual Report 2006 gives an estimate of legal costs that are "probable" and in "connection with our acquisition of Guidant." Exhibit C at page 19. Although the report may not be legally conclusive, it does lend credibility to the allegation that Boston Scientific assumed Guidant's potential liability.

In support of its position, Defendant briefly discussed the liability-shielding effects of a reverse triangular merger, and provided this Court with the Agreement and Plan of Merger ("Agreement") among Boston Scientific, Guidant and Galaxy Merger Sub, Inc. Defendant, however, simply asserts that Boston Scientific is shielded from Guidant's potential liability based upon the general merger language contained in Article I, Section 1.01 of the Agreement. No other language in the fifty-six page Agreement is referenced, and this Court is not yet convinced that the Agreement forecloses liability.

This Court is aware that "[o]ne of the outstanding facts of modern litigation is the diminishing importance of initial pleadings in light of the ease of amendment and the use of pretrial proceedings to lay the pleadings on the shelf." *Crum v. Anchor Cas. Co.*, 264 Minn. 378, 390, 119 N.W.2d 703, 711 (Minn. 1963). Plaintiffs should be allowed to develop a factual record, while Defendant may contest Boston Scientific's liability at a later dispositive motion.

WHL